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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the combined fifth and sixth periodic reports of Mexico

Addendum

Information received from Mexico on follow-up to the concluding observations*

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Contents

		Paragraphs	*Page*
I	Introduction	1–9	3
II.	Ensuring or strengthening fundamental legal safeguards for detainees	10–79	5
	A. Institutional measures	10–13	5
	B. Normative framework for the prevention and punishment of torture	14–37	6
	C. Training of civil servants	38–42	9
	D. Legislative measures for the prevention of torture	43–48	10
	E. Legal developments in the punishment of torture	49–79	13
III.	Conducting prompt, impartial and effective investigations	80–124	21
	A. Institutional measures taken by the Office of the Attorney General of the Republic	80–99	21
	B. Institutional measures taken by the Ministry of Defence	100–105	23
	C. Progress made in implementing the constitutional reforms dealing with the criminal justice system and human rights	106–124	24
IV.	Prosecuting persons suspected of committing acts of torture or ill-treatment and punishing those found guilty of doing so, as recommended in paragraphs 9, 10 (d) and 16 (a) of the concluding observations of the Committee	125–147	26
	A. Institutional measures taken by the Office of the Attorney General of the Republic	127–130	26
	B. Normative framework	131–132	27
	C. Statistical records	133–138	27
	D. Legal developments in the punishment of torture	139–147	28
V.	Steps taken to protect human rights defenders and journalists, as specified in paragraph 14 (b) of the concluding observations of the Committee	148–210	31
	A. Legal measures	148–166	31
	B. Institutional measures for the protection of journalists	167–180	33
	C. Legislative measures for the protection of journalists and human rights defenders	181–184	35
	D. Judicial measures	185–186	35
	E. Good practices in the protection of journalists at the state level	187–210	36
VI.	Conclusions	211–218	39

I. Introduction

1. In March 2011, as part of its efforts to fulfil its international obligations, in particular those undertaken upon its ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mexico submitted its combined fifth and sixth periodic reports on its compliance with the Convention. The State party then presented those reports at the forty-ninth session of the Committee against Torture on 31 October and 1 November 2012.

2. On that occasion, the Government of Mexico had the opportunity to inform the Committee about some of the most significant advances achieved in combating torture and providing protection against it, including: the constitutional amendments relating to human rights and *amparo* of June 2011, progress in the implementation of the 2008 reform of the criminal justice system, proposals to amend the Federal Act for the Prevention and Punishment of Torture in order to bring it into line with international standards, the adoption of the Act on the National Register of Missing and Disappeared Persons and the subsequent creation of the National Register of Missing and Disappeared Persons, and the establishment of the non-applicability of statutory limitations to the offence of torture in the relevant legislation of the states of Campeche, Chihuahua and Durango.

3. Following that presentation, the Committee against Torture issued its concluding observations (CAT/C/MEX/CO/5-6), in which it made 62 recommendations to the Government of Mexico on the prevention of torture in the State party. The recommendations concern the following issues: the definition of the crime of torture, fundamental legal safeguards, allegations of torture and arbitrary detention, *arraigo penal* (preventive detention), enforced disappearance, impunity and violence against women, the protection of human rights defenders and journalists, confessions obtained under duress, impunity for acts of torture and ill-treatment, application of the Istanbul Protocol in investigations of torture and ill-treatment, the reform of the military justice system, conditions of detention, the juvenile criminal justice system, the administrative detention of asylum seekers and undocumented migrants, psychiatric institutions, universal jurisdiction, reparation, training and the dissemination of the concluding observations.

4. This report is being submitted in order to inform the Committee of the steps taken to act upon its recommendations. It provides examples of the legislative and training measures taken in Mexico, in addition to the steps taken to investigate and punish torture, and deals, in particular, with the Committee's explicit request for information on the actions undertaken in respect of the following four recommendations:

(a) Ensure or strengthen fundamental legal safeguards for persons held in custody;

(b) Conduct prompt, impartial and effective investigations;

(c) Prosecute persons suspected of committing acts of torture or ill-treatment and punish those found guilty of doing so;

(d) Guarantee the protection of human rights defenders and journalists.

5. This report is in keeping with the commitment undertaken by the Government in the Pact for Mexico[1] and the National Development Plan 2013–2018.[2] It highlights, inter alia:

[1] Signed in Mexico City on 2 December 2012 by Enrique Peña Nieto, President of the United Mexican States, Jesús Zambrano Grijalva, President of the Democratic Revolutionary Party, María Cristina

legislative advances in the effort to combat torture; the provision of training to public officials on the prevention of torture; the work undertaken by bodies responsible for the administration of justice to ensure that acts of torture are properly investigated and that the Istanbul Protocol is effectively implemented; the judicial work carried out to punish perpetrators of acts of torture and ill-treatment; and the establishment of mechanisms to provide protection for human rights defenders and journalists.

6. The current Administration is committed to ensuring the continuity and, where necessary, the reinforcement of existing measures and programmes to promote and protect human rights, particularly ones that have been reviewed by national and international human rights mechanisms. This commitment is reflected in the country's submission of reports on its fulfilment of international obligations and in its participation in the universal periodic review.

7. The Committee's attention is drawn to the publication of the Human Rights Defenders and Journalists Protection Act,[3] the establishment of the protective mechanism provided for in that Act,[4] the promulgation of the new *Amparo* Act[5] and the recent decisions of the Supreme Court of Justice which accord the status of a constitutional right to all human rights established in international treaties and provide that no such right takes precedence over any other. In other words, human rights, irrespective of their source, constitute the parameter for assessing the constitutional validity of all norms and provisions forming part of Mexican law. The Supreme Court also decided that all rulings of the Inter-American Court of Human Rights are binding on the State of Mexico,[6] regardless of whether Mexico was a party to the litigation and provided that the *pro homine* principle has been applied.[7] The Committee's attention is also drawn to the submission by the executive branch of the federal government of a legislative package of proposals for the passage of two new laws to give expression to articles 29 and 33 of the Constitution in line with the human rights reform of June 2011 and the amendments introduced in the Federal Criminal Code with a view to establishing enforced disappearance as an offence not subject to any statute of limitation,[8] in accordance with international standards.

Díaz Salazar, President of the Executive Committee of the Institutional Revolutionary Party, and Gustavo Madero Muñoz, President of the National Action Party.

[2] Published in the *Diario Oficial de la Federación* on 20 May 2013.

[3] Published in the *Diario Oficial de la Federación* on 25 June 2012.

[4] The Governing Board of the Mechanism for the Protection of Human Rights Defenders and Journalists held its first meeting and was formally instated on 13 November 2012.

[5] Published in the *Diario Oficial de la Federación* on 2 April 2013.

[6] On 3 September 2013, the Supreme Court of Justice resolved Case No. 293/2011, which involved the conflicting holdings of two collegiate circuit courts regarding the following: (i) the hierarchy of international human rights treaties in Mexican law, and (ii) the nature of the human rights case law of international courts and, specifically, whether the case law of the Inter-American Court of Human Rights was binding. In that regard, please consult: http://www2.scjn.gob.mx/AsuntosRelevantes/pagina/SeguimientoAsuntosRelevantesPub.aspx?ID=129659&SeguimientoID=556&CAP=293/2011&Promoventes=&ActoReclamado=.

[7] This constitutes a legal milestone, since the human rights framework is broadened significantly by this principle. Mexican case law has thus been expanded considerably, given that, according to a study conducted jointly by the Supreme Court of Justice and the Inter-American Court of Human Rights itself (human rights case law search engine), the latter's case law contains at least **30,000** human rights concepts between which there are **152,000** explicit relationships.

[8] This legislative package was submitted to Congress by President Enrique Peña Nieto on 22 October 2013.

8. This report reaffirms the State's commitment to fulfilling its international obligations and recognizes the important work carried out by international human rights mechanisms to afford greater protection of those rights.

9. The Government of Mexico acknowledges the challenges that it faces in perfecting its legal, institutional and public policy architecture in order to combat torture. Nevertheless, it has achieved significant progress in that regard since it last presented a report to this Committee.

II. Ensuring or strengthening fundamental legal safeguards for detainees

10. The constitutional reforms of recent years, in particular those related to human rights, have strengthened the principle of due process, thereby transforming the Mexican legal system.[9] The main activities undertaken to safeguard the rights of detainees are described below.

A. Institutional measures

11. The Office of the Attorney General of the Republic is part of the Federal Prosecution Service. Its fundamental purpose is to act as the guardian of the law. The Organization Act of the Office of the Attorney General states that the work of its officials shall be governed by the principles of certainty, legality, objectivity, impartiality, efficiency, professionalism, honesty, loyalty, discipline and respect for human rights in accordance with the Constitution of the United Mexican States and the Organization Act itself, along with its implementing regulations.

12. As part of its efforts to uphold the human rights of detainees and victims, the Office of the Attorney General investigates, prosecutes and punishes perpetrators of acts of torture. The Office has been promoting and further developing a culture in which all acts of torture are condemned. In 2003, it concluded Agreement No. A/057/2003, which sets forth guidelines for detecting acts of torture and severe physical or mental suffering and for instituting criminal proceedings against the perpetrators of such acts. This agreement provides a legal foundation, at the national level, for the application of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

13. The Ministry of Internal Affairs has prepared a fact sheet on the rights of detainees with the aim of assuring members of the public that the federal authorities are expected to conduct themselves in accordance with the Constitution and to fully respect people's human rights. This fact sheet outlines the procedures that the federal police are to follow when arresting suspects; detainees must be informed of what those procedures are so that they will be fully aware of their rights are while they are waiting to be brought before the prosecuting authority.[10]

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[9] The 2008 reform of the criminal justice system, the constitutional reform dealing with human rights of June 2011 and the constitutional reform dealing with *amparo* of June 2011.

[10] The procedures include informing detainees of the following rights: the right to be informed of the reasons for their arrest; the right to be presumed innocent until proven guilty; the right to make a statement or to remain silent; if they choose to make a statement, the right not to incriminate themselves; the right to a defence lawyer of their choice and, if they do not have one, the right to have the State appoint one free of charge; the right to a translator or interpreter; the right to have a family

B. Normative framework for the prevention and punishment of torture

14. The Constitution and international treaties set forth the fundamental legal safeguards provided for detainees and expressly prohibit torture.

15. In keeping with the State's commitment to prevent, punish and completely eradicate acts of torture, the Government of Mexico has a legal framework in place at the federal and state levels for this purpose.

16. At the federal level, the crime of torture is covered by the Federal Act for the Prevention and Punishment of Torture. At the state level and in the Federal District, this offence is covered either by special legislation or by the relevant criminal code.

17. In accordance with the amendments to the Constitution promulgated through their publication in the official gazette, the *Diario Oficial de la Federación*, on18 June 2008 (see, in particular, article 20, section B), the rights of defendants include the following: (a) recognition of the presumption of innocence; (b) the right to be informed; (c) the right to be tried within four months or one year (depending on the maximum penalty for the offence in question); (d) the right to suitable legal assistance from a defence lawyer; and (e) the limitation of pretrial detention to no more than two years, unless it is extended in connection with the right of the accused to a defence.

18. Article 154 of the Federal Code of Criminal Procedure establishes that if the defendant is a member of an indigenous people or community, he or she shall be informed of the right to be assisted by an interpreter and by a defence lawyer who is familiar with that person's language and culture, as set out in article 2 of the Constitution. Article 128 of the Federal Code of Criminal Procedure also establishes the inalienable rights of individuals who are the subject of a criminal investigation in which they are a suspect.

19. If defendants have not requested release on bail, they shall be reminded of their right to make such a request as set out in article 399 of the Federal Code of Criminal Procedure. Subsequently, they shall be informed of the nature of the complaint or action and of the names of the plaintiffs and witnesses for the prosecution. They shall be asked whether they wish to make a statement and, if they do, they shall be questioned about the facts of the case.

20. If defendants choose not to make a statement, the judge is obliged to respect their wishes and record their decision in the case file. Defendants shall also be informed of all the guarantees that they enjoy under article 20 of the Constitution:

- That all witnesses and evidence that they bring forward shall be received under the terms set out in the law and that assistance will be provided in ensuring the appearance of the persons whose presence they request, provided that those persons reside in the location where the trial is to be held;
- That, if they are found guilty, they shall be sentenced within four months, in the case of offences for which the maximum sentence does not exceed two years, and within one year if the corresponding sentence exceeds that length of time;
- That, for the purposes of their defence, they may request and shall be furnished with any and all information that has been brought forward at any point in the proceedings.

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member or person of the detainees' choice informed of their detention and the place where they are being held at all times; the right to be brought before the competent authority without delay; and, if they are foreign nationals, the right to have their national consulate notified of their detention.

21. Moreover, in offices of state attorneys general and offices of assistant attorneys general of the Republic, progress is being made in the application of Agreement No. A/079/12, published in the *Diario Oficial de la Federación* on 29 April 2012, which sets out the instructions to be followed by the staff of the Office of the Attorney General when making arrests and turning people over to the judicial authorities. Compliance with these instructions is mandatory for the staff of the Office and police personnel in accordance with, and in strict application of, articles 1, 2, 14, 16, 18, 19 and 20 of the Constitution.

22. The State of Mexico and, by extension, its federal prosecutors are required to observe and apply international instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Inter-American Convention to Prevent and Punish Torture of the Organization of American States; the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

23. All persons who are brought before the operational authorities of the Office of the Attorney General enjoy the fundamental legal safeguards established under article 20, section B, of the Constitution and article 128 of the Federal Code of Criminal Procedure. This article of the Constitution lays down the rights that all accused persons must be granted from the moment of their arrest until they appear before the federal prosecutor, such as:

- The principle of the presumption of innocence;
- The prohibition of any kind of incommunicado detention, intimidation or torture;
- The right to be informed of the reason for their arrest, the acts which they are suspected of having committed and the rights to which they are entitled.

24. Article 128 of the Federal Code of Criminal Procedure establishes defendants' right to be informed of the charges against them, to have an adequate defence and to contact any persons they name, by telephone or by some other means of communication.

25. Moreover, article 154 of the Federal Code provides that if defendants are members of an indigenous people or community, they shall be informed of their right to be assisted by an interpreter and by a defence lawyer who is familiar with their language and culture, as set out in article 2 of the Constitution.

26. In cases where the commission of acts of torture is suspected, the specific legal provision covering such acts is also applied. These provisions (i.e., the Federal Act for the Prevention and Punishment of Torture, pertinent state laws and the instructions concerning medical/psychological evaluations in cases of possible torture or ill-treatment), in addition to international human rights law, will serve as the legal basis for the corresponding criminal investigation.[11]

27. In conducting its preliminary inquiries, the Federal Prosecution Service refers to rules of conduct set out in articles 1 and 4 of the Organization Act of the Office of the Attorney General and Agreement No. A/176/12, in addition to those posted on the website of the Office of the Attorney General[12] and those established by the Office of the Assistant Attorney General for Organized Crime Investigations (SEIDO) in a publication on procedures to be followed, which was last updated on 7 January 2014.

[11] Agreement No. A/057/2003 of the Office of the Attorney General of the Republic.

[12] See www.pgr.gob.mx/Combate%20a%20la%20Delincuencia/Documentos/Delitos%20Federales/FEPADE/acuerdos.pdf.

28. The forensic experts of the Office of the Attorney General are required to uphold the right to health at all times. As part of the fulfilment of that obligation, physical examinations are conducted at the request of the corresponding authorities before and after detainees make their statements in order to check on their physical and psychological condition. If such a person is found to be in need of medical attention, he or she is referred to the health services without delay for specialist care.

29. If a detainee has any kind of injury, regardless of whether it is indicative of torture, the federal prosecutor is required to have that person undergo a medical assessment. If the person states that he or she has been subjected to acts of torture, the federal prosecutor is required to launch a public inquiry to investigate the claim.

30. In order to ensure that the forensic procedures of the Office of the Attorney General of the Republic meet the highest standards and are aligned with best practices at the international level, a mechanism is needed for reviewing and updating the way in which the medical/psychological examinations outlined in the Istanbul Protocol are conducted. It is also important for the Office to coordinate and partner with its counterparts at the state level in order to further strengthen the legal safeguards for detainees. To this end, work is currently under way to develop training programmes on the prevention and eradication of torture and on approaches to the investigation of allegations of torture.

31. In accordance with articles 1, 14, 16 and 20, section B, of the Constitution and article 80 of the Code of Military Justice, the Ministry of Defence is the authority responsible for dealing with military personnel involved in making arrests when there is a possibility that they have committed an offence. The legal framework in question establishes that military personnel may make arrests only when a person is caught in flagrante delicto, that the human rights of such persons shall always be strictly respected, and that they shall be given access to means of communication, receive the relevant medical clearance and be brought before the competent authority without delay.

32. Victims of torture are guaranteed redress and have an enforceable right to fair and adequate compensation in accordance with article 10 of the Federal Act for the Prevention and Punishment of Torture.

33. Pursuant to article 8 of the Federal Act for the Prevention and Punishment of Torture, statements extracted under torture shall not be admitted as evidence in judicial proceedings.

34. In addition, commitment No. 32 of the Pact for Mexico sets out an obligation to strengthen the legal framework so as to ensure an effective response to acts of torture, cruelty, inhumanity, degradation and enforced disappearance.

35. The implementation of the Pact will commence during the first half of 2014. The Pact represents an ongoing commitment by the executive branch of the federal government and the major political forces in the country to reach agreement through political negotiations.[13]

36. During the Twelfth National Meeting of High Court Justices, Public Prosecutors and State Attorneys General, held in August 2012 in the city of Campeche, state attorneys general and the Attorney General of the Republic made the following commitments related to the prevention of torture:

[13] Signed in Mexico City on 2 December 2012 by Enrique Peña Nieto, President of the United Mexican States, Jesús Zambrano Grijalva, National President of the Democratic Revolutionary Party, María Cristina Díaz Salazar, President of the Executive Committee of the Institutional Revolutionary Party, and Gustavo Madero Muñoz, National President of the National Action Party.

- The 16 justice authorities at the state level that possess a legal instrument governing the issuance of medical/psychological evaluation reports of possible torture[14] agreed to bring those instruments into line with the existing provisions of the Office of the Attorney General of the Republic (A/057/2033);
- The 16 attorneys general and public prosecutors at the state level that do not yet have a protocol for the investigation of cases of torture[15] agreed to develop one;
- The participants made a commitment to organize, update and share their records and statistical databases on criminal proceedings regarding the crime of torture and to partner with one another.

37. It is important to highlight that, on 21 February 2013, the Ministry of Internal Affairs signed a cooperation agreement with the International Committee of the Red Cross with the aim of strengthening human rights standards related to the use of force and their application. The International Committee of the Red Cross will provide technical advisory services concerning the modification of the normative framework in Mexico in line with international human rights law. Since 2009, it has accredited more than 200 public servants as human rights trainers. There is also a cooperation agreement under which it has committed to provide technical advisory services in connection with the formulation of a bill on the use of force by public officials and the development of protocols for searches for disappeared persons.

C. Training for civil servants

38. With a view to strengthening fundamental legal safeguards for detainees, the Ministry of Defence regularly holds basic courses for members of the Federal Military Police Force, courses on criminal investigations and courses on the role of police officers in the new adversarial justice system.

39. Since June 2005, the Ministry of Defence has also been conducting a course/workshop for military personnel at the Mexican Army and Air Force Study Centre on medical examinations for the purpose of detecting cases of torture, documentation of torture and forensic investigations of deaths in which human rights violations are the suspected cause. Training focuses on:

- Human rights violations;
- Human rights which army and air force personnel must uphold in the performance of their duties;
- Basic principles regarding the use of force and firearms by law enforcement officials.

40. The Office of the Military Attorney General makes an ongoing effort to ensure that the staff of the Military Prosecution Service are aware of the need to follow institutional guidelines, such as the Istanbul Protocol, when conducting medical examinations of detainees in order to protect their human rights and uphold constitutional guarantees.

[14] Aguascalientes; Baja California; Campeche; Chiapas; Chihuahua; Durango; Federal District; Guanajuato; Guerrero; Michoacán; Morelos; Oaxaca; Querétaro; Quintana Roo; Mexico State; Veracruz.

[15] Baja California Sur; Coahuila; Colima; Hidalgo; Jalisco; Nayarit; Nuevo León; Nuevo León; San Luis Potosí; Sinaloa; Sonora; Tabasco; Tamaulipas; Tlaxcala; Yucatán; Zacatecas.

41. The civil servants of the Office of the Attorney General of the Republic regularly attend training programmes on topics relating to the work that they do. The aim of these programmes is to provide staff with access to a greater range of support tools and enable them to provide professional services that meet the needs of today's society. Training courses which are programmed by the Office of the Assistant Attorney General for Human Rights, Victim Care and Community Services are also held on a regular basis.

42. With a view to developing training programmes to familiarize members of the judiciary with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to encourage them to analyse and apply international standards in cases involving torture (Istanbul Protocol), the Supreme Court, in conjunction with the International Bar Association and the Office of the United Nations High Commissioner for Human Rights (OHCHR), has been spearheading courses and workshops on the prevention of torture within the framework of international human rights law, access to justice and the fight against impunity. These courses, which are designed primarily for federal judges and magistrates, federal public defenders and public prosecutors, focus on analysing theoretical and practical tools for preventing torture based on a systematic study of constitutional and treaty law and the latest decisions in the area of criminal justice and human rights, as well as the consideration of specific cases.

D. Legislative measures for the prevention of torture

43. With regard to legislative measures taken by Mexico to bring the definition of the offence of torture into line with international standards, reference is made to the following:

(a) On 31 October 2013, the Chamber of Deputies unanimously approved a decision on amendments to the Federal Act for the Prevention and Punishment of Torture aimed at protecting the integrity of victims and ensuring that investigations are conducted properly;

(i) The proposed bill, which would add an article 4 bis and an article 4 ter and recast article 7, was forwarded to the Senate for consideration and possible ratification;

(ii) One of the effects of the amendments would be to remove civil servants accused of committing acts of torture from all duties related to the detention or supervision of any person;

(iii) The bill stipulates that, when an investigation of acts constituting the offence of torture is launched and there is a risk of recurrence or of obstruction of justice, civil servants suspected of involvement in such acts must be assigned to duties unrelated to the detention or supervision of persons;

(iv) The bill states that the courts of Mexico have jurisdiction over offences committed in its territory or on board a ship or aircraft registered in Mexico when the alleged offender is Mexican. This also applies when the victim is Mexican and the alleged offender is a foreign national and is on Mexican territory, provided the latter's extradition has been refused and a final verdict has not been rendered against the alleged offender in the country in which the offence was committed;

(v) The bill is also intended to ensure that, when examining prisoners, medical experts use medical report forms that are in line with annex IV of the Istanbul Protocol and that detainees and prisoners are examined by a forensic medical expert or, in the absence of such an expert, or in addition to that expert if the detainees or prisoners so wish, by a doctor of their choice;

(vi) It further states that medical experts who examine prisoners must use report forms that are in line with the relevant international instruments to which Mexico is a party and must record any physical and/or psychological signs of torture or ill-treatment on those forms and issue a certificate to that effect. If the expert finds that pain or suffering has been inflicted, this must be reported to the competent authorities. The bill specifies that medical examinations must be conducted in a place which affords privacy for both the prisoner and the examiner.

(b) On 29 March 2011, a draft decree was submitted which would add an article 2 bis and amend article 3 of the Federal Act for the Prevention and Punishment of Torture;

(c) On 12 April 2011, the draft decree, which would amend a number of provisions of the Federal Act, was submitted;

(d) On 11 April 2012, the Senate issued its opinion concerning the draft decree, which would add a number of provisions to the Federal Act and amend others; on 24 April 2013, the text of a draft decree was returned to the Chamber of Deputies which would amend articles 1 to 6, add an article 2 bis and change the title of the Act to "Federal Act for the Prevention, Punishment and Eradication of Torture";

(i) The draft includes the following provisions: it establishes that the Act is a law of public order and is applicable throughout the national territory in respect of federal offences; it stipulates that a civil servant who, through an intentional act or omission, causes physical or mental suffering to be inflicted on a person in the course of a criminal investigation, as a measure of intimidation, as personal punishment, as a preventive measure, as a penalty or for any other reason has committed the offence of torture; it specifies that any act or omission intended to harm or obliterate the victim's personality is also deemed to be torture; and it adds a provision on what is not considered to be torture;[16]

(ii) On 24 April 2013, a draft decree was submitted to amend article 73, paragraph XXI, of the Constitution. It was approved by the reviewing chamber (Chamber of Deputies) on 17 July 2013 and referred to the state congresses for their approval;

(iii) The main objectives of the amendment are to improve procedural legislation and to provide for the use of alternative penalties and dispute settlement mechanisms. It stipulates that detainees must be able to enjoy all the rights provided for by law, be held in decent and proper living conditions throughout their detention and be housed at all times in premises that are in compliance with the international standards set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners;

(e) The Federal Government submitted a proposal to amend article 57 of the Code of Military Justice[17] offences of rape, torture and enforced disappearance committed by military personnel would be tried in ordinary courts. Exactly one year later, on 19 April 2012, the Senate issued its opinion regarding the proposal, which has not yet been returned to plenary for a vote;

[16] The purpose of this amendment is to address the current difficulty in defining the offence of torture. The intention of introducing the possibility that a civil servant may have committed torture when acting "for any other reason" (rather than only for the reasons currently established, i.e., obtaining a confession or extracting information, imposing a punishment or coercing the victim to do or not to do something) is to broaden the definition and to make a wider range of acts punishable under the law against torture.

[17] Submitted on 19 October 2010.

(i) The text in question states that the federal civilian authorities and courts have jurisdiction over offences committed by members of the armed forces against civilians, as well as violations of human rights. It should be noted that judgements handed down by the Inter-American Court of Human Rights[18] placed Mexico under an obligation to amend article 57.

(ii) The Ministry of Internal Affairs is working with the Ministry of Defence, the Ministry of the Navy and the Legal Service of the federal executive branch on an amendment of article 57 that will bring the Code into line with new international standards on this matter;

(f) Also in 2012, the Supreme Court ruled that article 57, paragraph II (a), of the Code was unconstitutional, and it recognized the right of aggrieved parties and members of their families to institute *amparo* proceedings to contest the jurisdiction of a military court.

44. On the basis of the judgement of the Inter-American Court in the *Radilla Pacheco* case and the first major precedent stemming from the amendment of constitutional human rights provisions, the Supreme Court ruled in its decision of 14 July 2011 on "Various matters 912/2010" that article 57 of the Code was in violation of article 13 of the Constitution.

45. Between 6 August and 13 September 2012, the Supreme Court, meeting in plenary, examined 30 cases relating to the restriction of military jurisdiction. In all instances it ruled in favour of referring them to an ordinary court, and it reiterated the unconstitutionality of article 57, paragraph II (a), of the Code. The Court found that violations of human rights do not fall within the competence of military courts and must be tried in ordinary courts, and it also recognized the right of civilian victims to bring *amparo* proceedings against military courts to challenge their jurisdiction over such cases.

46. The Office of the Military Attorney General and military judges have adopted the practice of referring all human rights cases originally brought before military courts to the civilian courts. From 1 January 2009 to 30 September 2013, the military courts referred 317 pretrial investigations and 226 criminal proceedings to the civilian courts. The Office of the Attorney General of the Republic is responsible for examining the results of inquiries in order to determine what action is required.

Single code of criminal procedure

47. The Pact for Mexico and the National Development Plan provide for the creation of an effective, expeditious, impartial and transparent system of criminal justice.

48. On 17 July 2013, Congress adopted a constitutional amendment providing for the promulgation of a unified code of criminal procedure and referred the text to the state legislatures. Its adoption, and the passage of a general law on fundamental legal principles, will facilitate the transition to an adversarial system and the establishment of a unified system for the administration of justice that is tailored to the country's legal and social realities.

[18] Judgement in the case *Radilla Pacheco v. Mexico*, 23 November 2009. Available at www.corteidh.or.cr/docs/casos/articulos/seriec_209_esp.pdf.

E. Legal developments in the punishment of torture

49. The Supreme Court has always considered torture to be an act of extreme brutality.[19]

50. More recently, the First Chamber recognized it as a criminal offence as such and concluded that the commission of the offence of torture may not be presumed, but must be proven and must be subject to all the rules of due process of criminal law.[20] In a non-binding opinion (*tesis aislada*) dealing with the right of access to information on pretrial investigations into crimes against humanity,[21] the same chamber deemed torture to be conduct constituting a crime against humanity in conformity with article 7 of the Rome Statute of the International Criminal Court (to which Mexico is a party). In this connection, it should be pointed out that the applicability of a statute of limitations depends on the nature of the offence in question; in other words, in order for a statute of limitation to be applicable to a criminal offence or offences, charges for that offence or those offences have to have been brought in line with article 155 bis (special regulations) of the Criminal Code of the State of Coahuila. The special regulations on statutes of limitations are not operative for offences against life and physical integrity (which is the case with torture).[22]

51. In the specific case of torture, the obligation to respect human rights, as set out in article 1, paragraph 3, of the Constitution, means that no public authority or individual acting on its behalf or with its support or acquiescence may carry out acts which impair a person's physical, psychological or moral integrity.

52. Without prejudice to the fact that the State has a legitimate monopoly on the use of force, its use of force must not be disproportionate, unnecessary or arbitrary. The State must ensure that its authorities resort to force only in exceptional circumstances, and on no account may they resort to torture or ill-treatment, even in grave situations, such as those involving terrorism, organized crime or subversion. The Supreme Court has stated that restrictions imposed by the authorities on the rights of an individual through an act of force must be reasonable and must be in keeping with the nature of the case at hand, it being understood that international and Mexican law have established that the right not to be tortured may not be restricted or limited for any reason whatsoever. The use of force by the authorities responsible for public security must also be in keeping with the principle of reasonableness, which requires that: (a) the acts in question are legal and are carried out for a legal purpose that is of a nature that justifies the act; (b) the act is necessary to achieve that purpose; and (c) action is proportional to the actual circumstances. All the above is in accordance with the guiding principles set out in article 21 of the Constitution, on police activity and respect for human rights, and with the opinion of the plenary of the Supreme Court dealing with public security and the requirements established to ensure that the use of

[19] See the opinion (*tesis aislada*) of the First Chamber of the Supreme Court, page 363 of the *Semanario Judicial de la Federación* (Judicial Weekly of the Federation), fifth term, volume CXXI, entitled "Brutal ferocidad". IUS Registration No. 295347.

[20] Opinion (*tesis aislada*) 1ª. CXCI/2009 of the First Chamber of the Supreme Court, page 416 of the *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume XXX, November 2009. IUS Registration No. 165901.

[21] Opinion (*tesis aislada*) 1ª. X/2012 of the First Chamber of the Supreme Court, page 650 of the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book V, February 2012, volume I. IUS Registration No. 2000209.

[22] Crimes against humanity are not subject to prescription. The cited opinion (*tesis*) is also in line with opinion (*tesis aislada*) VIII 1. 20 P of the Collegiate Circuit Court, ninth term, published in the *Semanario Judicial de la Federación y su Gaceta*, volume IX, March 1999, page 1447. IUS Registration No. 194409.

force by the police, as an act of the authorities which restricts rights, is in line with the criterion of reasonableness.[23]

53. In short, the State's obligation to respect the right to integrity of the person means that its use of force must be reasonable, necessary and proportional and that the use of torture or ill-treatment is absolutely prohibited.

54. In accordance with article 22, paragraph 1, of the Constitution, the death penalty, mutilation, public humiliation, branding, flogging, clubbing, tormenting of any kind, excessive fines, confiscation of property and any other unusual or excessive punishment are prohibited.

55. This provision is important because, on that basis, and bearing in mind the international treaties and federal legislation on the question, the Supreme Court laid down the obligations of the State with regard to the prevention of torture in an opinion issued by the First Chamber on the subject.[24]

56. The opinion specifies that the State must:

- Establish the punishment for the offence of torture, whether actually carried out or attempted, in its legal order;
- Punish perpetrators of torture and those who collaborate or participate in its commission;[25]
- Promptly arrest perpetrators of torture and bind them over for prosecution or extradition following a preliminary investigation;
- Provide for appropriate penalties for the offence of torture;
- Compensate victims;
- Provide all possible support for any criminal proceedings involving the offence of torture, including the submission of all available evidence;
- Prohibit the use of any statement or confession obtained under torture as evidence in legal proceedings.

57. In this opinion, the Supreme Court also established that the integrity of the person is the legal interest whose protection is the principal object and purpose of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The protection of this interest is vital because its violation impairs the enjoyment of other rights. The right to integrity of the person is anchored in the Constitution and in the international human rights instruments to which Mexico is a party. This is reflected in an opinion of the Supreme Court, pursuant to which the right to integrity of the person and decent treatment for detainees is guaranteed by the Constitution and by international treaties and may be invoked irrespective of the reasons for the deprivation of liberty.[26]

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[23] Opinion (*tesis aislada*) P LII/2010, page 66 of the *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume XXXIII, January 2011. IUS Registration No. 162989.

[24] Opinion (*tesis*) published in the *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume XXX, opinion 1ª CXCII/2009, of November 2009, page 416. IUS Registration No. 165900.

[25] On the basis of the definition of the offence of torture, the status of civil servant may be presumed on the basis of circumstantial evidence, according to decision 1ª./J.21/92 of the First Chamber of the Supreme Court, published in the *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume V, June 1997, page 195. IUS Registration No. 198448.

[26] Opinion (*tesis aislada*) P.LXIV/2010, page 26 of the *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume XXXIII, January 2011. IUS Registration No. 163 167.

58. Special mention should be made of the obligations of the State towards persons deprived of their liberty. From the moment that the authorities deprive a person of his or her liberty, the State becomes the guarantor of that person's rights. In order to fulfil the obligation that arises from this role of guarantor, State officials not only must abstain from acts which might be prejudicial to the life or physical integrity of the detainee, but also must seek, by all available means, to protect the detainee's fundamental rights, particularly the right to life and integrity of the person. In other words, the State must ensure that all persons are treated with due regard for their human dignity.

59. By the same token, the State must guarantee, at a minimum, the following rights for persons from the moment they are deprived of their liberty:

- Prompt access to a lawyer (adequate defence). This right is set out in an opinion of the First Chamber of the Supreme Court on an adequate defence in criminal proceedings, on the scope of this basic right and on the time from which it applies. Pursuant to this opinion, an adequate defence consists of the right of the accused to be assisted by a lawyer, who is entitled to be present during all trial proceedings and who must appear as often as necessary, starting from the point in time when the accused is turned over to the prosecution authorities. An adequate defence is an instrumental right whose purpose is to ensure that the punitive power of the State is exercised within the framework of a fair trial and that the fundamental rights of the accused are protected in their entirety, including the right not to testify against oneself, the right against self-incrimination, the right not to be held incommunicado, the right not to be tortured or to be detained arbitrarily, and the right to be informed of the reasons for one's arrest;[27]
- The right to notify a family member of one's arrest and, for foreign nationals, the right to consular assistance;[28]
- The First Chamber of the Supreme Court has stated on a number of occasions that the right to the presumption of innocence is a universal right whereby no one may be sentenced unless that person has been found guilty of committing the offence with

[27] See opinion (*tesis aislada*) 1a. CCXXVI/2013, published in the *Semanario Judicial de la Federación y su Gaceta*, tenth term, XXII, July 2013, volume 1, page 554. IUS Registration No. 2003959. See also decision I.9o.P. J/8 of the Collegiate Court concerning adequate defence, pursuant to which, as from 10 June 2011, this fundamental right is deemed to have been guaranteed only if the accused, when making a statement, is assisted by a qualified lawyer. Thus, if a statement is made only in the presence of a trusted person, it may not be admitted as evidence (legislation of the Federal District); published in the *Semanario Judicial de la Federación y su Gaceta*, Book XXII, July 2013, volume 2, page 1146. IUS Registration No. 2 003 958. Recently (sittings of 10 and 11 July 2013), the plenary of the Supreme Court ruled that an adequate defence must be technical; i.e., it must be provided by a lawyer: direct *amparo* review 2990/2011, 207/2012 y 2886/2012.

[28] Reference is made to the opinions (*tesis aisladas*) of the First Chamber of the Supreme Court on the fundamental right of foreign nationals to consular notification, contact and assistance and the basic functions which this right entails, opinion (*tesis*) CLXX/2013, published in the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XX, May 2013, volume 1, page 529. IUS Registration No. 2003538, and on the fundamental right of foreign nationals to consular notification, contact and assistance. Reference is also made to the opinion (*tesis*) on the purpose of article 36, paragraph 1, of the Vienna Convention on Consular Relations in international law, opinion CLXIX/2013, published in *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XX, May 2013, volume 1, page 530. IUS Registration No. 2003539 and to the opinion (*tesis*) on the fundamental right of foreign nationals to consular notification, contact and assistance, as distinct from the right to the presence of a lawyer and the right to a translator or an interpreter, opinion 1ª. CLXXII72013, published in the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XX, May 2013, volume 1, page 535. IUS Registration No. 2003544.

which he or she has been charged and of bearing criminal responsibility for it. With the constitutional reform of the criminal justice system of June 2008, the principle of the presumption of innocence was expressly given the status of a constitutional right, as it was explicitly incorporated into the revised Constitution (published in the *Diario Oficial de la Federación* on 18 June 2008).[29] The principle of the presumption of innocence is, in itself, an evidentiary rule in the sense that this multifaceted right establishes what requirements evidence must meet and who must supply it in order for it to be considered valid proof that a person is not innocent, as argued by the First Chamber of the Supreme Court in an opinion on the presumption of innocence as an evidentiary rule.[30] Similarly, the First Chamber is of the view that the basic right to the presumption of innocence, as a rule of treatment, should be understood in its extra-procedural dimension as the right to be considered and treated as a person who has not perpetrated or participated in a criminal act. The Court has also noted that the violation of this right may emanate from any State official, in particular police authorities. In conjunction with the foregoing, the violation of the rule of treatment of the presumption of innocence may have an impact on judicial proceedings when improper action by police officers who attempt to manipulate the facts may involve: ...(ii) a confession, the admission of an act, a prior statement by a suspect or a refusal to make a statement (...). These ideas follow from opinions (*tesis*) issued by the First Chamber on the presumption of innocence as a rule of treatment in its extra-procedural dimension, its content and characteristics[31] and on presumption of innocence as a rule of treatment in its extra-procedural dimension and the impact of a violation of the presumption of innocence on criminal proceedings;[32]

- The right to the services of an interpreter;[33]

- The right to be brought promptly before a judge. Articles 7 and 8 of the American Convention on Human Rights and article 9 of the International Covenant on Civil and Political Rights provide that anyone arrested or detained must be brought promptly before a judge or other officer authorized by law to exercise judicial power and is entitled to trial within a reasonable time or to release, without prejudice to the continuation of the proceedings, since his or her release may be subject to guarantees to assure that person's appearance for trial, and he or she is entitled to take up proceedings before a court in order that the court may decide without delay on the lawfulness of the arrest or detention and order the person's release if the detention is not lawful. This right is upheld in collegiate court opinions (*tesis*) on extradition, pursuant to which the deprivation of liberty of a person in the course of extradition proceedings must be approached from a human rights perspective in

[29] Opinion (*tesis aislada*) 1ª. I/2010, published in the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book IV, January 2012, volume 3, page 2917. IUS Registration No. 2000124.

[30] Opinion (*tesis aislada*) 1ª. XCV/2013, page 967 of the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XIX, April 2013, volume 1. IUS Registration No. 2003 345.

[31] Opinion (*tesis aislada*) 1ª. CLXXVI/2013, published in the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XX, May 2013, volume 1, page 564. IUS Registration No. 2003693.

[32] Opinion (*tesis aislada*) 1ª. CLXXVII/2013, *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XX, May 2013, volume 1, page 563. IUS Registration No. 2003692.

[33] See opinion (*tesis aislada*) VI 2º. P. 142 P of the Collegiate Circuit Court on Mexican and foreign detainees, pursuant to which, in order for a person to be asked to testify without the assistance of an interpreter, that person's mastery of Spanish must be such that s/he is at no disadvantage whatsoever in terms of his or her ability to follow the proceedings (criminal legislation of the State of Puebla), *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume XXXIII, March 2011, page 2358. IUS Registration No. 162570.

accordance with articles 7 and 8 of the American Convention on Human Rights and article 9 of the International Covenant on Civil and Political Rights, even in the case of administrative rather than criminal proceedings;[34] on prolonged detention, pursuant to which the retention of a suspect by the arresting authorities for a longer time period than is reasonable, taking the distance involved and the availability of transport into consideration, constitutes strong grounds for a presumption of incommunicado detention and of psychological distress on the part of the accused, thereby rendering any confession he or she may make inadmissible as evidence;[35] and on abuse of power, which is deemed to have occurred if police officers do not bring a suspect before the judge who issued the arrest warrant but instead hand the suspect over to prosecutors who are investigating a different offence (legislation of the State of Mexico);[36]

- The right against self-incrimination: article 20, section B, paragraph II, of the Constitution specifically guarantees this right, which presupposes the freedom of the accused to testify or to decline to do so. The right against self-incrimination must therefore be understood as the guarantee that an accused person may not be obliged to testify, whether to confess or to deny the authorship of the acts with which he or she is charged. Hence the prohibition on holding someone incommunicado, as well as the prohibition of torture and intimidation. By the same token, a confession, if made to any authority other than the public prosecutor's office or the judge, or to them without a defence counsel being present, lacks evidentiary value.[37]

60. Procedural violations committed during criminal proceedings, such as might be the case of the deprivation of liberty, are subject to (direct) *amparo* review, since the right to due process requires that essential procedural formalities be respected. Any deprivation of liberty must be in conformity with certain legal requirements in order for it to be constitutional. This is set out in the case law of the First Chamber, pursuant to which violations committed during the detention of an accused person for the exceptional reasons specified in article 16 of the Constitution (arrest in flagrante delicto or the need to take immediate action) must be considered in direct *amparo* proceedings when they have not been previously considered in indirect *amparo* proceedings.[38]

61. In other words, no one may be subjected to arbitrary detention, and anyone deprived of liberty has the right to appeal to a competent judge or court to take a prompt decision on the legality of the detention and to order the person's release if the detention is unlawful. This is established in the case law of the collegiate courts and is set out in an opinion (*tesis*) on direct *amparo* which states that the arguments put forward to prove that a complainant

[34] Opinion (*tesis aislada*) I.9o.P.15 P of the Collegiate Circuit Court, published in the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XII, September 2012, volume 3, page 1742. Registration No. 2001644.

[35] Opinion (*tesis aislada*) XX 2o. 95 P of the Collegiate Circuit Court, published in the *Semanario Judicial de la Federación y su Gaceta*, ninth term, Book XXIX, January 2009, page 2684. Registration No. 168153.

[36] Opinion (*tesis aislada*) II.2°.P.58 P of the Collegiate Circuit Court, published in the *Semanario Judicial de la Federación y su Gaceta*, ninth term, Book X, November 1999, page 948. IUS Registration No. 192889.

[37] See the opinion (*tesis*) of the First Chamber on the right against self-incrimination, scope and content of article 20, part A, para. II, of the Constitution, opinion 1a. CXXIII/2004, *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume XXI, January 2005, page 415. IUS Registration No. 179607.

[38] Opinion (*tesis*) 1a./J.45/2013, published in the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XXII, July 2013, volume 1, page 529. IUS Registration No. 2004134.

has been detained illegally must be examined.[39] Similarly, the court of cassation must consider ex officio both the trial and the verdict in order to determine whether fundamental rights have been violated in any way. Under the new system of criminal justice in the State of Chihuahua, the principle of unconditional respect of fundamental rights requires that the court of cassation analyse ex officio both the trial of an accused and the judgement in order to determine whether or not there have been any violations that must be remedied.[40]

62. In accordance with the case law of the First Chamber of the Supreme Court, *amparo* proceedings may not be made subject to time requirements when acts are concerned which injure, infringe or violate fundamental human values, such as life, personal freedom or integrity of the person.[41]

63. In expressing its views regarding confessions obtained under duress, the First Chamber has said that the State is under an obligation to prevent any statement or confession obtained under torture from being admitted as evidence in court.

64. The First Chamber has recently provided guidelines on evidence obtained by illegal means, and there are several opinions (*tesis*) (from the fifth to the seventh terms) regarding the use of a confession obtained under duress as evidence.

65. Thus, in order for a confession to be valid, it may not be obtained under duress of any kind.[42]

66. In addition, if a confession is not immediately brought to the attention of the judge, it is not sufficiently credible to serve, in itself, as evidence of the guilt of the accused. A confession obtained following incommunicado detention constitutes a substantive violation of procedure and cannot be admitted as evidence.[43]

67. Article 22 of the Constitution, article 5 of the Universal Declaration of Human Rights, article 5 of the American Convention on Human Rights and article 7 of the International Covenant on Civil and Political Rights recognize the human right of all persons not to be subjected to acts of torture. This basic right was also recognized by Mexico when it signed the Inter-American Convention to Prevent and Punish Torture, articles 1, 6 and 8 of which provide that persons who assert that they have been tortured have the right to petition the authorities to proceed immediately to investigate their case on an ex officio basis. Article 20, section B, paragraph II, of the Constitution stipulates that

[39] Opinion (*tesis*) I. 9o.P. J/4 of the Collegiate Circuit Courts, *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XVI, January 2013, volume 3, page 1755. IUS Registration No. 2002449.

[40] Opinion (*tesis*) XVII.1o.P.A. J/24, *Semanario Judicial de la Federación y su Gaceta*, ninth term, Book VI, March 2012, volume 2, page 878. IUS Registration No. 160249.

[41] Opinion (*tesis*) 1a./J11/97, page 269 of the *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume V, March 1997, page 269. IUS Registration No. 199219, entitled: "Committal order. Appeal against the order through application for *amparo* may be filed at any time".

[42] See, for example, opinion (*tesis aislada*) VI 1o. 227 P of the collegiate circuit courts, pursuant to which a confession made under duress is defined as a confession rendered by a detained person which does not meet the requirements set out in article 16 of the Constitution; see page 542 of the *Semanario Judicial de la Federación y su Gaceta*, eighth term, volume XIII, June 1994. IUS Registration No. 212 192; and see the opinion (*tesis aislada*) of the First Chamber on invalid confessions, Semanario Judicial de la Federación, volume LXII, second part, page 23. IUS Registration No. 260 141.

[43] In conformity with the jurisprudence of the collegiate courts regarding confessions and the insufficient evidentiary value of a confession, in and of itself, if the accused person was detained for five days or more without being brought before a judge because this suggests that the confession was obtained under duress; page 53 of the *Semanario Judicial de la Federación y su Gaceta*, No. 74, February 1994. IUS Registration No. 213 335.

accused persons have the right to testify or to remain silent and prohibits incommunicado detention, intimidation and torture.[44]

68. Consequently, Mexico is under an obligation to prevent and investigate acts of torture, to prosecute and punish the perpetrators and to provide compensation to the victims as part of its obligation to guarantee effective remedies to individuals whose rights have been violated. Thus, the obligation of the State to investigate, try and punish means that the authorities not only must prevent such acts, but are also under an obligation to initiate a prompt and impartial investigation on an ex officio basis when there is reason to believe that an act of torture has been committed.[45]

69. Persons who assert that they have been subjected to acts of torture have the right to have the authorities take prompt action to ensure that their claim is investigated and, where appropriate, addressed in criminal proceedings. If an investigation into acts of torture is to be effective and is to prevent impunity, it must be carried out promptly. In the interests of a prompt and impartial investigation of such acts, when judicial authorities are apprised, in the course of their duties, of an instance in which a person is claiming to have been the victim of acts of torture, they must, on their own initiative, notify the prosecuting authorities, who must then investigate the alleged offence. The failure of a judge to take action on an ex officio basis to investigate alleged acts of torture constitutes a violation of procedure which has an impact on the verdict, since an investigation resulting in a positive finding would mean that the conviction was based on a confession obtained under duress (opinion (*tesis*) of the collegiate courts XXVI 5° (V Region) 8P (10 a)).[46]

70. An allegation of torture gives rise to an obligation that is borne by all the authorities of Mexico (within their spheres of competence), not just those who are to investigate or try the case.

71. Thus, bearing in mind the *pro homine* principle, any report or information brought to the attention of any authorities in the course of their duties is to be deemed to be a complaint of torture. These ideas are derived from an opinion (*tesis*) of the collegiate courts on acts of torture which states that, when judicial bodies acting in the performance of their duties are informed that a person claims to have been tortured, they must, on their own initiative, notify the prosecuting authorities, which must then investigate the alleged offence.[47]

72. The offence of torture, just as any other criminal offence, is subject to duly constituted criminal proceedings whose purpose is to determine whether or not the offence was committed. This commission of this offence cannot be presumed, but must instead be proven by proper legal means. In other words, the proceedings must adhere to all the rules of due process in order to provide legal certainty for all persons and thereby uphold the rule of law. The burden of proof cannot rest on the accused.

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[44] Opinion (*tesis*) of the First Chamber of the Supreme Court 1ª CXXIII/2004, published in the *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume XXI, January 2005, page 415. IUS Registration No. 179 607.

[45] Idem.

[46] Regarding acts of torture, the opinion states that the failure of a judge to investigate the allegations of an accused on an ex officio basis constitutes a violation of procedural law which has an impact on the judgement, pursuant to article 160 (VIII, XIV and XVII) of the *Amparo* Act which was in force until 2 April 2013. IUS Registration No. 2004374.

[47] Opinion (*tesis aislada*) XVIII 1° (VIII Region) J/1, published in the *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book XI, August 2012, volume 2; page 1107. IUS Registration No. 2001218.

73. With regard to the rights of detained persons, the last paragraph of article 19 of the Constitution prohibits any ill-treatment or harassment during arrest or imprisonment or exposure to discomfort for which there is no legal justification, and the State is therefore under an obligation to punish any civil servants who commit such acts. This is set out in an opinion (*tesis*) prepared by the Supreme Court in plenary, in accordance with which the State must punish civil servants who commit acts which constitute ill-treatment during the arrest or imprisonment of an individual.[48]

74. The country's prison system must be run in a way that ensures that the human rights of persons deprived of their liberty will be respected and that their health will be protected. This means that, when a detainee has an illness or condition requiring medical treatment, the judge or magistrate who ordered his/her arrest must take the necessary steps to ensure that the detainee receives proper and timely medical attention. The guidance provided by the collegiate courts regarding the right to health of persons being held in pretrial detention indicates that the judge or magistrate in charge of the case is responsible for taking the necessary steps during the trial to safeguard the accused person's health; this also holds true for the administrative authorities responsible for the correctional facility where a convicted person is serving his or her sentence.[49]

75. With regard to alternatives to prison sentences, in accordance with the case law of the collegiate courts concerning offences punishable by an alternative penalty, and in line with the principle that the provision that most favourable to the offender should be applied, it has been established that a fine is less onerous than imprisonment, which entails deprivation of liberty. Reference is made to the legislation of the State of Veracruz relating to offences punishable by alternative penalties and fines.[50]

76. Pursuant to the revised wording of articles 18 and 21 of the Constitution, the imposition of penalties is the exclusive domain of the judiciary. This has been upheld in an opinion of the Supreme Court in plenary on penalties which stipulates that, as from 19 June 2011, the judiciary has exclusive jurisdiction with respect to sentence compliance.[51]

77. As noted earlier, the Supreme Court, in conjunction with the International Bar Association and OHCHR, has been developing a number of training courses and workshops in order to familiarize members of the judiciary with the provisions of the United Nations Convention against Torture and to encourage them to analyse and apply international standards in cases involving torture (Istanbul Protocol).

78. This year, five two-day training courses were conducted in Monterrey, Chihuahua, the Federal District, Guadalajara and Tuxtla Gutiérrez by international experts from the Subcommittee on Prevention of Torture and federal judicial officials. The courses dealt with the content of international instruments and their application in the judicial system. The development of this course is one of the steps taken by Mexico pursuant to the recommendations of the Committee against Torture concerning the provision of training to acquaint judicial officials with international standards and the application of the Istanbul Protocol in investigations into acts of torture and ill-treatment.

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[48] Opinion (*tesis aislada*) P.LXVI/2010, *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume XXXIII, January 2011, page 24. IUS Registration No. 163182.

[49] Opinion (*tesis aislada*) XXVII 1° (VIII Region) 8 P of the Collegiate Circuit Court, *Semanario Judicial de la Federación y su Gaceta*, tenth term, Book VIII, May 2012, volume 2, page 1857. IUS Registration No. 2000769.

[50] Binding opinion (*tesis de jurisprudencia*) VII/P. J/37, *Semanario Judicial de la Federación y su Gaceta*, ninth term, volume IX, April 1999, page 401. IUS Registration No. 194358.

[51] Opinion (*tesis*) P./J.17/2012, *Semanario Judicial de la Federación y su Gaceta*, XIII, October 2012, volume 1, page 18. IUS Registration No. 2001988.

79. In September 2013, the Supreme Court, together with the International Bar Association's Human Rights Institute, put out a manual on the implementation of national and international standards for the prevention of torture in Mexico entitled "Protegiendo a las personas contra la tortura en México: Guía para operadores jurídicos" (Protecting persons against torture in Mexico: a manual for judicial officials). In the introduction to that manual, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Juan E. Méndez, stressed the key role that judges, prosecutors and lawyers play in ensuring that all acts of torture are investigated and that the victims of torture have access to justice and can obtain reparation. He then went on to note that well-informed legal practitioners who are aware of the issue can make a significant contribution to the fight against torture in Mexico.

III. Conducting prompt, impartial and effective investigations

80. This section provides information on some of the actions carried out by the justice authorities in accordance with the Constitution and the international human rights treaties to which Mexico is a party.

A. Institutional measures taken by the Office of the Attorney General of the Republic

81. As mentioned earlier, on 18 August 2003 the Office of the Attorney General of the Republic concluded Agreement No. A/057/03, which deals with the medical/psychological evaluations which are to be made in cases of possible torture or ill-treatment. This agreement serves as the basis for investigations into cases of torture.

82. This agreement lays down institutional guidelines to be followed by staff of the Federal Prosecution Service, forensic physicians and medical examiners of the Attorney General's Office in undertaking the corresponding evaluations and states that medical/psychological evaluations must be carried out in the case of any individual who complains of such abuses.

83. The Office of the Attorney General is in the process of reviewing and updating this agreement in order to bring it into line with the recent constitutional amendments dealing with human rights and with the Victims Act, which has been in force since 9 February 2013.

84. In cases where a medical/psychological evaluation of a person who may have been subjected to torture or ill-treatment is called for – whether because a complaint has been lodged by a person who claims to have been tortured or mistreated, or because, in the opinion of the forensic physicians and/or medical experts who examine the detainee, there are signs or evidence of possible torture and/or ill-treatment, or because the Attorney General of the Republic has ordered such an evaluation, the officer of the Federal Prosecution Service is then required to ask the Department of Expert Services of the Office of the Attorney General to arrange for the evaluation to be carried out.

85. In cases where personnel of the Office of the Attorney General become aware that an accused person has sustained physical injuries, the Attorney General must request that an expert assessment be conducted in order to ascertain how the injuries were produced. This serves as a basis for determining whether the arresting officers abused their authority at the time that the accused was taken into custody.

86. As part of the documentation of cases of possible torture in Mexico, a forensic medical expert and psychologist from the Department of Expert Services of the Office of

the Attorney General evaluate the individual pursuant to official instructions to do so in accordance with Agreement No. A/057/03; the forensic medical expert initially avails him or herself of the following sources of information:

- The documentation related to the case;
- An interview with the victim;
- The medical examination;
- Supplementary examinations conducted with the assistance of a psychologist and a photographer as a basis for the expert's report.

87. If the medical/psychological evaluation and/or the assessment of the manner in which the injuries were produced warrant it, a report or detailed account of the probable acts of wrongdoing committed at the time of the arrest is sent to the internal oversight body of the arresting authority.

88. Any public official who, in the exercise of his or her duties, becomes aware of an act of torture and does not report it immediately may be subject to a preliminary investigation under article 11 of the Federal Act for the Prevention and Punishment of Torture and may be liable to a sentence of from 3 months' to 3 years' imprisonment and a fine of from 15 to 60 days' minimum wage.

89. The Specialized Unit for the Investigation of Crimes against the Environment and Crimes under Special Laws of the Office of the Assistant Attorney General for the Investigation of Federal Crimes has investigated acts referred to in articles 3[52] and 4[53] of the Federal Act for the Prevention and Punishment of Torture. In these cases, the Specialized Unit has worked on an impartial basis in accordance with the guidelines set out in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) to gather evidence to establish the corpus delicti and probable criminal liability.

90. In addition, the Directorate-General for Follow-Up to Recommendations and Mediation in Human Rights Cases of the Office of the Attorney General has opened preliminary inquiries into possible acts of torture based on the decisions issued by district criminal courts and recommendations issued by the National Human Rights Commission.

91. The Office of the Assistant Attorney General for Human Rights, Crime Prevention and Community Services of the Office of the Attorney General has developed a training programme for staff of the Office of the Attorney General on combating torture and on the medical/psychological evaluation of cases of possible torture or ill-treatment.

92. As mentioned earlier, in accordance with article 1 of the Organization Act of the Office of the Attorney General of the Republic, investigations initiated by the Office adhere to the principles of certainty, legality, objectivity, impartiality, efficiency, professionalism, honesty, loyalty, discipline and respect for human rights. Preliminary inquiries are carried out within the shortest time frame necessary to determine whether or not a crime has been

[52] Article 3. A public servant commits the offence of torture if, in the exercise of his or her official functions, the public servant inflicts severe pain or suffering, whether physical or mental, on an individual in order to obtain information or a confession from that individual or a third party, or to inflict punishment for an act which that individual has or is suspected of having committed, or to coerce the individual into engaging or not engaging in a specific act.

[53] Article 4. Anyone committing the crime of torture shall be sentenced to a term of imprisonment of from 3 to 12 years, fined from 200 to 500 days' minimum wages and disqualified from holding any public office, position or commission for up to twice the length of the prison sentence.

committed and to establish the probable criminal liability of the person or persons who are charged. The authorities conducting such inquiries do so in a totally impartial manner and with the utmost professionalism and efficiency.

93. In addition, in each case the prosecuting authority ascertains the time of day when detainees are brought to the Prosecution Service and the time of their arrest. If a delay between those two times is detected, the officials who made the arrest are questioned about the reason for that delay. Information is requested about whether force was used in making the arrest and, if so, the officials under investigation are asked to provide information showing that the use of force was justified. These investigations are conducted in accordance with Agreement No. A/057/03, as stated above.

94. A specialized unit to investigate cases of disappeared persons and possible enforced disappearances has recently (27 May 2013) been established in the Office of the Attorney General. This unit has concluded various agreements with offices of attorneys general at the state level for the investigation of cases of enforced disappearance.

95. Its main objective is to coordinate the continuation of investigations into cases of disappeared persons.

96. The reason for this initiative is that the most common complaint voiced by members of civil society and by victims' families is that investigations into such cases have been dropped.

97. Initially, the unit will be staffed by 12 officials from the Federal Prosecution Service, who will be supported by a permanent team of federal police officers.

98. It will also serve as an entry point for the families of disappeared persons, who will be able to gain access to information about the cases, pursuant to the new Victims Act, and to participate in the search for their family members.

99. Although the decision to set up this unit has come under harsh criticism, the unit constitutes an important mechanism for coordinating the efforts of the Government and society to address this problem.

B. Institutional measures taken by the Ministry of Defence

100. In accordance with articles 13 and 21 of the Constitution and articles 36, 37 and 100 of the Code of Military Justice, if personnel in the Office of the Military Attorney General of the Ministry of Defence become aware of any report or complaint of acts that may constitute the crime of torture having allegedly been committed by military personnel against civilians, the Office immediately conducts preliminary inquiries and works swiftly to gather evidence to clarify the situation and establish liability.

101. Investigations into complaints of alleged acts of torture are opened as soon as an officer of the Federal Prosecution Service learns of the possibility that such an act has been committed, whether through a direct report or complaint submitted by an alleged victim in writing or in response to a summons to provide a statement to the public prosecutor, or through a court hearing.

102. When the public prosecutor is taking a detainee's statement and transferring his or her custody, the detainee is always assisted by either a private lawyer or the federal public defender and is asked about his or her arrest. If the person wishes not to make a statement, he or she is asked only whether there has been any ill-treatment or whether he or she has injuries of any kind and, if so, who inflicted them and how. In such cases, a person's desire not to make any statement regarding the events under investigation is respected at all times.

103. If a detainee states that he or she has been subjected to ill-treatment and suffers from any kind of injury, a medical expert is asked to determine the mechanics of the injuries and whether they might be the result of torture.

104. Thus, as soon as probable acts of torture come to light, the appropriate and necessary procedures, including the immediate evaluation referred to in the Istanbul Protocol, are carried out. In order to establish the corpus delicti and probable criminal liability.

105. The authorities ensure that, in the event of a complaint of acts of torture or ill-treatment, the public officials suspected of having committed those acts are immediately suspended for the duration of the investigation, especially if there is a risk that the acts might be repeated or that the investigation might be obstructed. If the officials in question are found to be culpable, the authorities ensure that proceedings are initiated on a basis that is commensurate with the seriousness of the acts in question.

C. Progress made in implementing the constitutional amendments dealing with the criminal justice system and human rights

1. Reform of the criminal justice system

106. Since the constitutional reform of June 2008, the Government of Mexico has made significant progress in overhauling the criminal justice system by introducing an adversarial system for criminal proceedings at the federal and state levels.

107. The reform is designed to expedite the administration of justice by introducing oral pleadings and a system that provides broader protection for the rights of victims and aggrieved parties as well as for the rights of the accused.

108. The new adversarial criminal justice system in Mexico provides for alternative dispute settlement mechanisms, makes police investigations more effective by granting the police technical and functional autonomy under the supervision of the Federal Prosecution Service and strengthens crime prevention. These changes reinforce due process guarantees relating to criminal proceedings.

109. In 2008 a coordinating council for the criminal justice system was established to carry forward the implementation of this adversarial system. A technical secretariat for that council was also set up to design and implement policies, strategies and coordination mechanisms to support the reform throughout the country. In 2012 the judicial branch of the Federal Government established an implementation unit to align the structure and organization of the judiciary with the constitutional amendments dealing with the criminal justice system, human rights and *amparo*.

110. This reform expedites the administration of justice, thanks to the introduction of oral pleadings, and provides for the establishment of a system that upholds the rights of victims and aggrieved parties as well as the rights of accused persons and, in so doing, strengthens due process. More than 20 different benefits or rights are set forth in key human rights provisions that have a direct impact in terms of the prevention of torture. They include:

- Transitioning to oral, adversarial, consolidated, single and direct public proceedings;
- Strengthening the presumption of innocence for all accused persons until such time as they are declared criminally liable in a judgement issued by a trial judge;
- Reaffirming the recognition of the right of every accused person to speak or to remain silent, strictly forbidding torture, intimidation or incommunicado detention of any kind, and nullifying the evidentiary effect of any confession made without the assistance of counsel;

- Establishing the right of accused persons to an adequate defence at a public trial with the assistance of a lawyer of their own choosing or, if necessary, by a court-appointed public defender and recognizing the inalienable right to a defence and the State 's obligation to provide that defence;
- Establishing the position of due process judge, who is to immediately process requests from the Prosecution Service concerning protective or precautionary measures and investigation techniques, while at all times upholding the parties' due process guarantees;
- Introducing alternative dispute settlement mechanisms.

111. To date, 3 states have fully implemented the adversarial criminal system and 10 have partially done so. In all, 6 additional states are expected to fully implement the system later this year, and 3 more will do so in 2014. The target is to achieve full implementation of the new criminal justice system by 2015.

2. Major advances

112. Three states are already using the new system throughout their territories (Chihuahua, Morelos and the State of Mexico), 10 states are using it in some areas (Tabasco, Chiapas, Nuevo León, Zacatecas, Durango, Yucatán, Oaxaca, Puebla, Guanajuato, and Baja California), and another 6 will begin using it some time in 2013 (Tlaxcala, Sinaloa, Coahuila, Tamaulipas, Veracruz and Quintana Roo). These will be joined by another 3 states in 2014 (Michoacán, Sonora and San Luis Potosí), and the rest of the 31 states and the Federal District are expected to adopt the system in 2015.

113. A total of 23 states have already adopted and promulgated codes of criminal procedure that have been brought into line with the principles and objectives of the reform of the criminal justice system. In another 7, state codes are being considered by the corresponding congresses, and in another 2 the codes are in the drafting stage.

114. The coverage, in terms of population, of the adversarial criminal justice system amounted to 31.2 million people by the end of 2012, which represents 63.8 per cent of the total population of the states where the system is fully or partially operational and 28.4 per cent of the country's total population.

115. In 2012, training was provided to 535 criminal judges, 1,677 public prosecutors, 275 mediators, 2,205 judicial police officers, 1,058 public defenders and 8,753 municipal police officers.

116. Less than 10 per cent of all cases are tried by means of oral proceedings, which means that more than 90 per cent are resolved by due process judges, alternate dispute settlement mechanisms — compensation agreements and provisional stays of proceedings — (36.4 per cent), shortened proceedings (36.9 per cent) and other types of solutions, such as non-endorsement of detention, non-committal or the dropping of charges by the victim (21 per cent).

117. Under the new criminal justice system, all criminal cases are resolved in less than 365 days. Cases dealt with by means of shortened proceedings and alternate dispute settlement mechanisms take between one-half and one-third the time it would have taken to resolve the case through an oral trial.

118. It can therefore be affirmed that, under the new justice system, cases can be resolved more quickly.

3. Victim Assistance Committee

119. The constitutional amendments dealing with human rights enacted in June 2011 require the issuance of various regulatory laws to give effect to provisions set out in articles 1, 11, 29 and 33 of the Constitution. As part of this effort, the President of the Republic, Enrique Peña Nieto, announced the promulgation of the Victims Act on 9 January 2013.

120. The Act sets out the implementing regulations for article 1 of the Constitution, which establishes the obligation of the three levels and three branches of government to promote, respect, protect and safeguard human rights and to prevent and investigate human rights violations, punish the perpetrators and grant redress to victims.

121. It also provides for the establishment of the Executive Committee on Victim Assistance as the main operational body for the assistance of crime victims and victims of human rights violations.

122. The Committee was established by the Senate on 8 October 2013 once its seven members had been selected and approved in accordance with the Victims Act. The members will serve as representatives of victims and civil society organizations.[54]

123. The Committee's duties include setting up and managing the national register of victims in order to ensure that victims have access to health and social services. In addition, the Committee members will be responsible for determining the amount of compensation to be paid by the State to victims.

124. The Committee does not yet have its own budget but is expected to become operational in 2014.

IV. Prosecuting persons suspected of committing acts of torture or ill-treatment and punishing those found guilty of doing so, as recommended in paragraphs 9, 10 (d) and 16 of the concluding observations of the Committee

125. This section contains information on institutional measures taken by the federal authorities responsible for punishing human rights violations, particularly acts of torture and ill-treatment, in accordance with Mexican law.

126. It also provides statistics on sentences handed down for the offence of torture at the federal level.

A. Institutional measures taken by the Office of the Attorney General of the Republic

127. When officials of the Office of the Attorney General of the Republic, and in particular officials of the Federal Prosecution Service, are carrying out criminal investigations, their job is to gather evidence to establish the corpus delicti and to determine probable criminal liability. Once the officials believe that such evidence has been collected, in accordance with articles 14, 16, 21 (a) and 102 of the Constitution and articles 168 and 180 of the Federal Code of Criminal Procedure, they present the information brought to

[54] The elected members are: 1. Julio Hernández Barros, 2. Adrián Franco Zevada, 3. Susana Thalía Pedroza, 4. Carlos Ríos Espinosa, 5. Jaime Rochin, 6. Olga Noriega, and 7. María del Rosario Torres Mata.

light during the investigation to the appropriate district judge, who is authorized by the Constitution to decide whether or not to initiate criminal proceedings and to follow through with them until such time as a judgement is pronounced.

128. Public officials from the Office of the Attorney General are required to comply with Agreement No. A/057/2003, which establishes the institutional guidelines to be followed by officers of the Federal Prosecution Service, forensic physicians, experts and other staff of the Office of the Attorney General when a medical/psychological evaluation to detect possible signs of torture or ill-treatment is to be conducted.

129. The investigating authority is required to ensure that all suspects who are under criminal investigation are registered without delay in the appropriate detention registration system in accordance with Agreement No. A/126/2010. The purpose of this requirement is to ensure the full accuracy of detention records so that any person being held in custody can be located at any time.

130. The National Conference of State Attorneys General, a collegiate public agency that is part of the National Public Security System, is responsible for drawing up and monitoring strategies, measures and policies on combating crime, investigating offences, ensuring that legal safeguards are in place and addressing other issues within its field of competence. At its regional meetings and subsequently at the national meeting held in May 2013, the Conference agreed that all offices of state attorneys general would implement the Istanbul Protocol and that the Conference would launch a national training programme. Implementation of the programme is already under way.

B. Normative framework

131. In accordance with article 16 of the Constitution, as soon as any person who has committed an offence is arrested, that person is immediately handed over to the public prosecutor and informed of the charges and of his or her rights in the presence of that person's lawyer or, if applicable, the federal public defender. The person is also provided with the available means to contact family members or some other trusted individual.

132. Furthermore, pursuant to article 16 (a) of the Constitution, the Prosecution Service is required to inform the proper authorities of the possible commission of an offence so that the authorities can take the appropriate legal measures.

C. Statistical records

133. Federal court judgements concerning the offence of torture and other offences committed by a State official are, according to the records of the Council of the Federal Judiciary, as shown below:

	Year registered									
Offence	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	***Total***
Abuse of authority	179	127	107	155	183	200	284	518	287	**2 040**
Misuse of public office	49	50	31	46	54	29	50	67	3	**379**
Torture	6	2	5	10	3	12	2	40	39	**119**
Torture under the Code of Military Justice	0	0	0	0	0	0	0	4	0	**4**

134. The definition of the criminal offence of torture contained in article 3 of the Federal Act for the Prevention and Punishment of Torture makes it difficult for an investigator to establish that such an offence has been committed because it includes a subjective element. In order for the offence of torture to have been committed, the purpose of the perpetrator's actions must have been to "obtain information or a confession from the tortured individual or a third party, or to inflict punishment for an act which that individual has or is suspected of having committed, or to coerce that person into engaging or not engaging in a specific act". This means that, if the purpose of the action cannot be shown to be that of obtaining a confession or information, meting out punishment for an act committed or coercing the victim into acting or refraining from acting in some way, then the judge cannot find that the offence of torture has been committed and will instead have to apply the definition of a different offence.

135. This accounts for the small number of convictions for the offence of torture and the increase in convictions for the offences of abuse of authority and misuse of public office.

136. Article 194 of the Federal Code of Criminal Procedure identifies the criminal offences that are categorized as serious offences on the ground that they have a significant adverse effect in terms of the fundamental values of society. Section IV of that article categorizes the offence of torture, as defined in articles 3, 5 and 11 of the Federal Act for the Prevention and Punishment of Torture, as a serious offence and establishes a penalty of from 3 to 12 years' imprisonment, a fine of from 200 to 500 days' minimum wage and disqualification from holding any public office, position or commission for up to twice the length of the prison sentence.

137. In all such cases, the constitutional guarantees to which accused persons are entitled are respected at all times, in accordance with article 20 (b) of the Constitution.

138. Also, as mentioned earlier, between 1 January 2009 and 30 September 2013 the military courts declined jurisdiction in favour of the civilian authorities in 317 preliminary inquiries and 226 criminal proceedings.

D. Legal developments in the punishment of torture

139. Specifically with regard to military jurisdiction, in the Supreme Court's opinions (*tesis*) regarding "Various matters 912/2010" (the case of *Radilla Pacheco*), the Court established a clearly restrictive interpretation of the criminal jurisdiction of military courts and stated that, in the light of articles 2 and 8.1 of the American Convention on Human Rights, article 57 of the Code of Military Justice was incompatible with article 13 of the Constitution.

140. The Supreme Court's decision in the case "Various matters 912/2010" regarding fulfilment of the order of the Inter-American Court of Human Rights concerning the enforced disappearance of Mr. Rosendo Radilla Pacheco constitutes the first major precedent associated with the recent constitutional amendments dealing with human rights, as it recognizes and upholds the rights set forth in the international treaties to which Mexico is a party. In this case the Court found that recognition by Mexico of the jurisdiction of the Inter-American Court is incontestable; it also established that the federal judiciary should fully comply with the measures of redress set forth in the Inter-American Court's judgement.

141. In this ground-breaking decision, the Supreme Court ruled that all judicial authorities in Mexico are required to verify, ex officio, that national laws are compatible with international treaties, which means that national courts have the power to refrain from applying laws that infringe human rights. It also ruled that military courts do not have jurisdiction in cases involving human rights violations and stated that, as part of the

implementation of the aforementioned judgement of the Inter-American Court of Human Rights, the federal judiciary is duty-bound to develop ongoing training courses on the case law of the Court.

142. As a result, the Supreme Court, sitting in plenary session, issued five important judicial opinions (*tesis*) on the constitutional review system in the Mexican legal order in which is provides for shared oversight of constitutionality and ex officio oversight of treaty compatibility and defines the criteria to be used and the steps to be followed when carrying out such oversight in relation to human rights matters.

143. In the same vein, in December 2012 the First Chamber of the Supreme Court issued binding jurisprudence for all judicial authorities in the country in a document on oversight of constitutionality and treaty compatibility.[55]

144. In addition to establishing the above-mentioned interpretation, the Supreme Court reassumed its original authority to settle conflicts over jurisdiction between military criminal courts and civilian courts. On 6 August 2012, the Supreme Court, sitting in plenary, began considering 30 cases relating to the jurisdiction of military courts. Over the course of several plenary sessions, the Supreme Court handed down decisions on 13 different cases dealing with the scope of the jurisdiction of military criminal courts in Mexico, basing its decisions on article 13 of the Constitution and the various international human rights instruments. Some of the most important of these decisions are those in which the Court establishes which matters and which persons come under the jurisdiction of military criminal courts and stipulates that cases involving human rights violations fall outside the scope of military courts and must be heard by ordinary courts.

145. The following is an overview of the decisions taken by the Supreme Court on the subject:

Case	*Issue*
38/2012	Military criminal courts do not have jurisdiction over cases involving civilian victims.
60/2012	The civilian courts are competent to hear cases involving military personnel on active duty who are charged with the offence of giving false testimony or providing false evidence to the civilian Prosecution Service because this is an offence that does not infringe the legal interests of the armed forces.
133/2012	Civilian victims have the right to initiate *amparo* proceedings to challenge the jurisdiction of a military court.
134/2012	When seized with any matter that clearly falls under civilian rather than military jurisdiction, the *amparo* tribunal should apply the legal concept of amendment of deficient pleadings, so as to invalidate the rule of jurisdiction provided for in article 57, paragraph II (a), of the Code of Military Justice. In addition, a writ of *amparo* should be granted so that the federal court nullifies the constitutional term order issued by the military court that lacked jurisdiction, assesses the facts and reaches a decision as provided for in article 19 of the Constitution.

[55] Constitutional amendment of 10 June 2011.

Case	*Issue*
770/2012, 60/2012, 61/2012, 63/2012[56] and 62/2012	These decisions confirm the jurisdiction of the civilian courts and stipulate that the legal concept of amendment of deficient pleadings should also be applied in these cases.
217/2012	A case in which the victim is a member of the military does not necessarily fall under military jurisdiction. Due to the nature of the acts committed, namely murder and robbery, the case should be heard by a civilian court.
252/2012	When the perpetrator of the offence is a member of the military assigned to the State police force and is charged with the offence of tampering with the crime scene, as defined in the State Criminal Code, the federal courts are competent to hear the case.
224/2012	The military courts are competent to hear cases in which a committal order is issued for the offence of dereliction of duties shared by all army personnel because the commission of that offence does not directly violate the fundamental rights of civilians, since the aggrieved party is society in a general sense.
15/2012	This decision applies a restrictive interpretation of article 13 of the Constitution, whereby the military courts do not have jurisdiction over cases in which members of the Armed Forces are charged with offences related to situations resulting in violations of the human rights of civilians.

146. In its judicial opinion (*tesis*) 1a. CXCI/2011 (9a.), the First Chamber of the Supreme Court stated that the military disciplinary system is not exempt from the obligation to respect fundamental rights, as its instrumental nature must be in keeping with the guarantees and principles set out in the Constitution. Thus, in its decision 1a./J. 13/2012 (10a.), the First Chamber of the Supreme Court recognized, with regard to the offences set out in the Code of Military Justice, the victim's fundamental right to redress for the harm suffered. It therefore established that the amount of money set as bail must be enough to cover the estimated amount of compensation owed.

147. The Inter-American Court of Human Rights, in its Order on Monitoring Compliance with the Judgment of 14 May 2013 in the case of *Radilla Pacheco v. Mexico*, highlighted the Supreme Court decision in the case "Various matters 912/2010", noting that it: "constitutes an important step forward as regards the protection of human rights, not only in the context of this case, but in all the domestic spheres of the Mexican State." The Court reiterated that the Supreme Court ruling made "a positive contribution to the protection and promotion of human rights in the Mexican State".

[56] Cases that also involve acts of torture.

V. Steps taken to protect human rights defenders and journalists as specified in paragraph 14 (b) of the concluding observations of the Committee

A. Legal measures

148. On 25 June 2012, the Human Rights Defenders and Journalists Protection Act was promulgated. The aim of this law is to facilitate cooperation among all levels of government in implementing risk-reduction, prevention and urgent protection measures to safeguard the lives, well-being, freedom and safety of persons at risk as a result of their efforts to defend and promote human rights, to exercise freedom of expression and to work as journalists.

149. The Act provided for the establishment of a mechanism for the protection and promotion of human rights defenders and journalists, and on 13 November 2012, the Mechanism held its first working session.

150. The Mexican State created this mechanism in response to a specific recommendation made in 2011 by the Special Rapporteur on the right to freedom of opinion and expression, Frank La Rue, and the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights (IACHR), Ms. Catalina Botero. That recommendation focused on the establishment of an independent mechanism for the protection of journalists in order to ensure the participation of journalists and civil society organizations.

151. Since this mechanism is intended to serve as a starting point for the development of an inclusive public policy, its participants include key actors in the field of freedom of expression in Mexico, such as representatives of the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Attorney General's Office and the National Human Rights Commission, along with various civil society experts on freedom of expression.

152. This mechanism falls under the authority of the Ministry of Internal Affairs and consists of three bodies.

1. Governing Board

153. The Governing Board is the Mechanism's highest-ranking authority and its main decision-making body. It is composed of a representative of the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Attorney General's Office, the Federal Police, the National Human Rights Commission and four representatives of civil society, who also sit on the Constituent Council.

2. Constituent Council

154. The Constituent Council is the consultative body of the Governing Board. It is composed entirely of representatives of civil society who are experts in promoting and defending human rights and freedom of expression.

3. National Executive Office

155. The National Executive Office is the authority responsible for coordinating protection work among federal authorities, authorities at the state level and autonomous public bodies.

156. The Office has three units which are responsible for registering, assessing and monitoring cases:

- Reception and Early Response Unit;
- Risk Assessment Unit;
- Prevention, Monitoring and Analysis Unit.

157. One of the significant contributions that the Mechanism makes to the protection system for journalists in Mexico is that it can tailor the measures used in each case, thus enhancing their effectiveness. The different types of measures are as follows:

(a) Risk reduction: measures designed to reduce risk factors for journalists include public policies and programmes;

(b) Prevention: measures taken to prevent assaults on journalists include instructions, manuals, self-protection courses and accompaniment by observers;

(c) Protection: mechanisms for minimizing exposure to danger include mobile telephones, radios or satellite telephones, security measures in buildings, bullet-proof vests and armoured vehicles;

(d) Urgent protection: immediate measures for safeguarding the life, well-being and freedom of journalists include evacuation, temporary relocation, the use of escorts and the continuous monitoring of specified buildings.

4. Fund for the protection of human rights defenders and journalists

158. In accordance with article 48 of the Act, a fund for the protection of human rights defenders and journalists was established. The resources in this fund are used solely for the implementation of prevention, protection and urgent protection measures provided by the Mechanism for the Protection and Promotion of Human Rights Defenders and Journalists.

159. The resources are administered through a non-parastatal public fund. The main activities carried out this year in this connection include the following:

(a) On 27 February, the operating rules for the fund were adopted;

(b) On 16 July, the technical committee of the fund was inaugurated and held its first ordinary session. The representative of the Ministry of Internal Affairs chairs the committee, which also includes representatives of the Attorney General's Office, the Ministry for Foreign Affairs and the National Commissioner for Security;

(c) On 1 October, the federal budget allocation for the 2013 fiscal year (127,500,000.00 pesos) was transferred to the fund;

(d) As of now, the resources in the fund amount to 169,895,841.61 pesos. This sum represents the allocation from the Federal Government and the accrued interest;

(e) On 5 November the operating rules for the fund were published in the Federation's official gazette.

160. The Mechanism reflects the Mexican State's strengthened resolve to protect, promote and uphold all human rights and fundamental freedoms.

161. Since its inception, the Mechanism has received 105 requests, 96 of which were accepted and 9 rejected. Of those requests, 64 related to human rights defenders and concerned 164 defenders in all, while 41 were related to journalists and concerned 58 journalists in all. A total of 65 requests were submitted using the regular procedure and 31 using a special procedure. The Governing Board has taken decisions in 33 cases.

162. The Mechanism has carried out 46 risk assessments, including 6 which will be presented at the Governing Board's next session; 36 of these assessments have been initial

evaluations, 9 are re-evaluations and, in one case, the Governing Board has requested additional information.

163. The Governing Board has held 12 regular and 5 special sessions. Its discussions and the agreements reached during those meetings have centred around the model for cooperation agreements between the Governing Board and the states and around the procedures to be used in implementing protection measures and conducting risk assessments. Two sessions have focused on the operating rules for the fund for the Mechanism for the Promotion and Protection of Human Rights Defenders and Journalists.

164. The states which have submitted the most requests to the Mechanism are Veracruz and Oaxaca.

165. To date, the Mechanism has entered into cooperation agreements with 25 states which provide for joint action in dealing with attacks committed in those states. The states which have yet to sign cooperation agreements are: (a) Baja California; (b) Baja California Sur; (c) Nuevo León; (d) Quintana Roo; (e) Sonora; (f) Tlaxcala; (g) Federal District. The cooperation agreement with the Federal District is nearly ready for signature.

166. An evaluation of the implementation of the Mechanism indicates that the Mexican State makes every effort, using the tools at its disposal, to provide all human rights defenders and journalists who are at risk with the necessary protection so that they may carry out their professional activities unhindered.

B. Institutional measures for the protection of journalists

167. In addition to the work carried out by the Mechanism for the Promotion and Protection of Human Rights Defenders and Journalists, Agreement A/145/10 of the Attorney General's Office was published in the Federation's official gazette on 5 July 2010. This agreement provided for the establishment of the Office of the Special Prosecutor for Offences Committed against Freedom of Expression (FEADLE), which replaces the Office of the Special Prosecutor for Offences Committed against Journalists (FEADP). The changeover is intended to empower the Prosecution Service to manage, coordinate, supervise, investigate and prosecute crimes committed against those engaging in any kind of journalistic activity whatsoever.

168. As of 1 November 2012, FEADLE was implementing the first stage of the early warning system, whose purpose is to ensure that timely, appropriate assistance is provided to victims who engage in journalistic activities as a form of freedom of expression. This involves the speedy adoption of preventive and protective measures to stop a threat from actually being carried out and to avert the loss or destruction of evidence that would help to identify the person or persons making or carrying out a threat.

169. As at 30 June 2013, FEADLE had responded to 36 requests from the Federal Prosecution Service for the implementation of precautionary measures. In 12 of those cases, action was taken by different authorities and, in the other 24, action was taken by the Mechanism for the Promotion and Protection of Human Rights Defenders and Journalists. In addition, there were 25 requests for inclusion in the Mechanism.

170. A booklet setting out the procedures to be used in implementing preventive protection measures and urgent protection measures was prepared and 120 copies were printed up. These instructional booklets were provided to the public prosecutors of the Office of the Attorney General for the State of Coahuila who attended a training course. A total of 131 public servants received this training (34 from FEADLE and 97 from the Office of the Attorney General for the State of Coahuila: 34 from the sub-headquarters in Saltillo, 39 from Torreón and 24 from Piedras Negras), which will help to standardize the

procedures used to ensure the proper implementation of the laws on the protection of journalists and to raise awareness of how important the initial contact with a victim is in determining the precautionary measures applicable in specific cases.

171. Two manuals concerning assistance for journalists have been produced. The first establishes the procedures that the federal prosecutors in the different divisions of the Attorney General's Office should follow when, working in conjunction with FEADLE, they open a preliminary inquiry or prepare a detailed report on acts committed against journalists in their professional capacity. The second describes the steps that journalists should take if they have been the victim of an attack.

172. FEADLE currently has a draft outline of procedures for providing assistance to journalists. The final document will set out guidelines that federal prosecutors should follow when opening preliminary inquiries and registering cases for submission to the Mechanism and for follow-up by the early warning system.

173. A manual on the prevention of crimes against freedom of expression was produced and presented at a course for 30 journalists, directors and publishers of *El Mañana*, a Nuevo-Laredo-based newspaper in Tamaulipas. The manual outlines the kinds of precautions which persons engaging in journalistic work should take.

174. FEADLE is also developing two basic manuals designed to increase the effectiveness of investigations into murders and disappearances of journalists. In addition, it is preparing three leaflets for public distribution on, respectively, the Victims Act, FEADLE and the early warning system.

175. Under the Federal Judiciary Organization Act, federal judges have jurisdiction over cases involving ordinary offences that have been taken over by the Federal Prosecution Service.

176. The Office of the Attorney General Organization Act provides for a system of specialization and establishes that the administrative office in charge of prosecuting cases involving offences committed against the right and freedom of expression shall have access to data, registers and documentation of other offices that are relevant to its work.

177. The Federal Criminal Code provides that, when the commission of a wilful wrongdoing affects or limits freedom of expression, the trial judge shall increase the sentence by up to one third of the sentence established for the offence in question and by up to one half of the established sentence when the offence has been committed by a public servant in the performance of his or her functions or when the victim is a woman and gender-related motives were involved.

178. From 5 July 2010 to 30 June 2013, FEADLE opened 373 investigations and brought 47 cases to trial. FEADLE referred 245 cases which fell outside its field of competence back to the local authorities, who were asked to decide whether or not to institute proceedings; 23 preliminary inquiries were carried out and, as of 30 June 2013, 88 investigations were under way.

179. In the same period, FEADLE prepared 270 detailed reports, 160 of which led to the opening of preliminary inquiries; another 73 case files were closed. As of 30 June 2013, 47 detailed reports were being compiled.

180. Lastly, with a view to preventing irreparable harm, from 1 January 2010 to 31 December 2012, FEADLE ordered the adoption of 144 precautionary measures to protect and assist victims and their families who were at risk owing to acts intended to limit freedom of expression, as well as certain media outlets that were under threat.

C. Legislative measures for the protection of journalists and human rights defenders

181. On 25 June 2012, the official gazette of the Federation published a decree which added a second paragraph to section XXI of article 73 of the Constitution of Mexico. This provision authorizes federal courts to investigate and try ordinary offences linked to federal crimes or to offences committed against journalists or other persons or facilities that affect, limit or undermine the right to information, freedom of expression or freedom of the press.

182. On 3 May 2013, the official gazette of the Federation published amendments to the Federal Code of Criminal Procedure, the Federal Judiciary Organization Act, the Office of the Attorney General Organization Act and the Federal Criminal Code.

183. The Code empowers the federal courts to try ordinary offences committed against any journalist or other person or facility that affect, limit or undermine the right to information, freedom of expression or freedom of the press. Federal judges thereby have jurisdiction over cases involving such offences. This power is exercised in any of the following circumstances:

- When the perpetrator is a state or municipal public servant;
- When the victim or aggrieved party identifies a public servant as the suspected perpetrator;
- In cases involving felonies;
- When the life or physical integrity of the victim or aggrieved party is in danger;
- Upon request of the authority having jurisdiction over the location where the crime was committed;
- When the crime has a far-reaching impact on the exercise of freedom of expression or freedom of the press;
- In cases of real and widespread risk of impairment of the exercise of freedom of expression;
- When the nature of the offence is such that its commission extended beyond the scope of one or more states;
- When the Mexican State is found to bear international responsibility for omissions or shortcomings in an investigation.

184. The law also provides for the submission of an application for reconsideration on behalf of the aggrieved party if the federal courts refuse to exercise jurisdiction.

D. Judicial measures

185. The Supreme Court has established significant precedents in respect of effective guarantees for the exercise of freedom of expression. The following opinions (*tesis*) and jurisprudence serve as examples: "Freedom of expression and the neutrality obligation of the State with regard to the content of opinions" (Opinion (*tesis*) 1.ª XXIX/2011 [10a]); "Freedom of expression: the Constitution does not recognize the right to insult" (Jurisprudence 1.ª/J. 31/2013 [10.ª]); "Freedom of expression and the right to honour: expressions protected by the Constitution" (Jurisprudence 1.ª/J.32/2013 [10.ª]); "Freedom of expression: its limits in light of the dual protection system and 'actual malice' standard" (Jurisprudence 1.ª/J. 38/2013 [10.ª]).

186. There are over 17 opinions (*tesis aisladas*) of the First Chamber of the Supreme Court (tenth period) which broaden the right to freedom of expression and the right to information and define media rights.

E. Good practices in the protection of journalists at the state level

1. Veracruz State Commission for the Assistance and Protection of Journalists

187. In June 2011, the head of the executive branch submitted a bill to the state congress to amend the Constitution of the Free and Sovereign State of Veracruz by adding a section (section V) to article 67.

188. The state congress voted in favour of the creation of an independent constitutional body to assist and protect journalists and to ensure that they are free to exercise their profession.

189. Section V was promulgated on 9 November. It states:

> "Article 67
>
> V. The task of assisting and protecting journalists and of promoting the free exercise of the profession of journalism, with full respect for the right to information, shall be performed by the State Commission for the Assistance and Protection of Journalists.
>
> (a) The Commission shall be authorized to:
>
> 1. Decide on and provide assistance and protection measures for journalists upon request, make use of the material, economic and functional resources and support necessary for implementing its decisions and establish the substantive criteria and guidelines for their enforcement;
>
> 2. Submit complaints and grievances to institutions involved in the administration of justice and the protection of human rights when the legal rights of journalists are threatened, attacked or at imminent risk as a result of the exercise of their profession and arrange with the competent authorities for the adoption of immediate assistance and protection measures.
>
> (b) The Commission shall consist of four journalists, two media owners or directors, two representatives of non-governmental organizations and one academic involved in teaching, outreach or research activities, who shall act as Commissioners, and an Executive Secretary, who shall attend meetings in an advisory capacity, together with heads of departments with responsibility for media-related and judicial matters in state government agencies.
>
> (c) The Commissioners and the Executive Secretary shall be appointed by the State Governor subject to confirmation by the state congress, by a two-thirds majority of the members present, and shall serve a term of four years, renewable once only. The procedure for the appointment of the President of the Commission, and the functions of the President, the other Commissioners and the Executive Secretary, shall be set out by law."

190. The Commission enjoys technical, budgetary and administrative independence and is a citizens' organization.

191. Act No. 586 on the State Commission for the Assistance and Protection of Journalists entered into force on 3 December 2011. It sets out the functions and basic organizational structure of the Commission.

192. Article 3 provides for the following functions:

"I. To grant to journalists, upon request, the assistance and protection measures necessary to prevent threats from being carried out and to address imminent risks to, or attacks on, the legal rights which are associated with the exercise of their profession; to request the competent authorities to enforce such measures; and to report public servants who fail to meet their obligations, in accordance with the provisions of the law;

II. To establish the objective elements necessary for determining whether or not assistance and protection measures should be granted and to adopt appropriate criteria, guidelines and procedures for safeguarding the legal rights of journalists;

III. To plan, coordinate and monitor the implementation of assistance and protection measures for journalists, in cooperation with the competent specialized agencies, administrative authorities and judicial bodies;

IV. To coordinate and cooperate with civil society organizations which work actively to provide assistance and protection to journalists in the defence of the right to freedom of expression;

V. To enter into any agreements, contracts and accords necessary for the achievement of its aims and purposes;

VI. To acquire the assets necessary for the performance of its functions and to administer the resources allocated for that purpose;

VII. To organize and determine the structure and function of its internal departments and units; and

VIII. To issue the technical rules provided for in article 7 (i) of the present Act, as well as internal regulations and manuals setting out the organizational and operational structure of the Commission."

193. The plenary of the Commission, which is its highest-level decision-making forum, is responsible for establishing the general guidelines for its work by adopting, inter alia, internal regulations and procedural protocols for the departments and units that make up the operating structure of the Commission.

194. Article 11 of Act No. 586 provides that, for the exercise of its functions, the Commission shall have an Executive Secretary, who shall be responsible for managing its various organs, units and departments in accordance with the decisions and instructions issued by the Commission when sitting in plenary session.

195. Under Act No. 586, the Commission is empowered to promote the exercise of the rights to freedom of expression and to access to information in Veracruz society.

196. Article 25 of the Act provides that the decisions of the Commission shall be binding on State officials.

2. Structure of the Commission

197. The plenary sessions of the Commission are its highest-level decision-making forum. These sessions take the form of a collegiate assembly of journalists, operators of media organizations and representatives of journalists' associations. Their purpose is to establish guidelines for the operation of the Commission as a whole by adopting internal rules and procedural protocols for the departments and units that make up the operating structure of the Commission.

198. Article 11 of Act No. 586 states that, for the exercise of its functions, the Commission shall have an Executive Secretariat that will be responsible for managing its various organs, units and departments in accordance with the decisions and instructions of the plenary assembly.

199. The Procedures Division is tasked with initiating the procedure for granting precautionary measures for journalists whose legal rights are threatened as a result of their exercise of the right to freedom of expression. The Division has three offices:

- Office of Admissibility and Assistance. This office is the first point of contact for persons making requests that come under the ordinary procedure. It screens applications and accepts or rejects them on the basis of various objective criteria;
- Office of Risk Assessment. This office analyses applications that have been declared admissible in order to determine the level of risk in each case and to take the corresponding protection measures;
- Office of Monitoring and Analysis. This office is responsible for monitoring the implementation of the protection measures and of extension, revocation and termination procedures.

200. The Prevention and Promotion Department is responsible for conducting courses, workshops and programmes to train journalists in self-protection techniques and security matters in order to reduce the likelihood of their exposing themselves to risks in the exercise of their profession.

201. The Commission also has a legal department and an administrative unit. It formally began operating on 7 January 2013.

202. During its first year of operation, efforts were focused on prevention strategies and on consolidating ties between the profession and the Commission.

3. Mechanism for the Protection of At-Risk Human Rights Defenders and Journalists of the Federal District

203. The Government of the Federal District, in coordination with civil society organizations and units dealing with protection and access to justice, have taken the initiative in establishing a mechanism for the protection of human rights defenders and journalists who find themselves at risk as a result of their activities. To this end, civil society agencies and organizations were invited to collaborate in the design of the Mechanism. On 29 March 2012, an inter-agency cooperation agreement on the establishment of the Mechanism was signed by the Ministry of Internal Affairs of the Federal District, the Ministry of Public Security of the Federal District, and the Office of the Attorney General of the Federal District, in coordination with the Commission and the High Court of Justice of the Federal District.

204. Civil society organizations were publicly invited to take part in a plenary meeting held for the purpose of choosing which two organizations specialized in the defence of freedom of expression and which two organizations specialized in the defence of human rights would be represented on the Specialized Committee on Risk Assessment. The Committee was subsequently established with those organizations as members, along with representatives of Federal District government agencies with decision-making powers that work with the Mechanism.

205. The Specialized Committee and the Consultative Group jointly developed risk assessment and management procedures, as well as a risk analysis methodology. The Executive Secretariat of the Mechanism, which is attached to the Office of the Under-Secretary of Internal Affairs, coordinates the work of both bodies and implements the

protection measures recommended by the Consultative Group to the Committee, which selects the most appropriate measures in each case. The Executive Secretariat's function is to take all the necessary steps to ensure implementation of the prevention and protection measures and to maintain ongoing contact and follow-up with the beneficiaries of the measures.

206. Under the established procedures, persons requesting protection measures may apply directly to any of the Mechanism's units, which then refer cases to the Executive Secretariat. The Secretariat makes initial contact with applicants and conducts a critical path assessment in order to decide on immediate action or, in the absence of imminent risk, to collate the information required for the case to be assessed according to the Consultative Group's procedures.

207. In order to enable the Mechanism to meet the highest standards of protection, support was provided throughout the process by the Mexico Office of the United Nations High Commissioner for Human Rights. The Office also facilitated the organization of workshops with the Committee's units, experts from the Office of the Attorney General of the Federal District, representatives from the Ministry of Public Security and the Office of the Under-Secretary of Internal Affairs, and international experts in risk assessment. The workshops were aimed at establishing a common methodology and procedures in line with the highest international standards so that the agencies involved will be able to respond effectively to the needs of a sector under constant threat.

208. To date, most of the cases dealt with by the Mechanism have been initiated by applicants from other Mexican states who find the safeguards they need in the Federal District. However, in most instances, once they are in Mexico City, the risk they run decreases considerably, and their requests therefore tend to focus on the support required to live a decent life, such as employment, food, schools for their children, etc.

4. Mechanism for the Protection of Journalists of the State of Chihuahua

209. On 13 July 2012, pursuant to the Human Rights Defenders and Journalists Protection Act, the Government of the State of Chihuahua signed a cooperation agreement for the establishment of the state's protection mechanism with the Governing Board of the Mechanism for the Promotion and Protection of Human Rights Defenders and Journalists.

210. The parties to the agreement undertook to establish cooperation arrangements for the implementation of measures designed to safeguard the lives, freedom and safety of human rights defenders and journalists.

VII. Conclusions

211. Mexico maintains a policy of complete openness and cooperation with international human rights mechanisms. Within that framework, a number of visits have been made to the country by representatives of human rights bodies which have resulted in a series of recommendations, and efforts are being made to act upon those recommendations in due course.

212. The issues raised most frequently by these international human rights mechanisms with respect to Mexico have been the elimination of the practice of preventive custody (*arraigo*), the successful implementation of the reform of the criminal justice system and the establishment of mechanisms to ensure that judicial decisions are promptly and fully executed and enforced.

213. Maintaining its unstinting commitment to international human rights instruments, Mexico is aware of the work that remains to be done to address each and every one of the

recommendations made by international human rights mechanisms, in particular those relating to the prevention, punishment and eradication of torture.

214. One of the main challenges in this regard, given that Mexico is a federation, is to harmonize the way in which the crime of torture is defined throughout the country and ensure that this definition is in line with international standards. This is an urgent task requiring the cooperation of the legislature and the executive branch at the federal and state levels.

215. Another challenge is to establish a national register of complaints of torture and ill-treatment that will make it possible to identify violations of the rights of persons under any form of detention and to punish the persons responsible. The register should include the personal data of the complainant, the name of the authority involved and information on the action taken in follow-up to the complaint.

216. It is essential to strengthen support programmes for victims and their relatives; torture and ill-treatment not only violate the dignity of the human person but can also impair individuals' health and social development, with negative repercussions on their economic and family circumstances.

217. There is an ongoing need to strengthen training programmes for law enforcement, prison and justice administration personnel that focus, in particular, on appropriate use of force and arrest techniques, following an approach based on human rights and protection of the individual.

218. Finally, continued efforts are needed to achieve nationwide implementation of Agreement No. A/57/2003 concerning the use of medical/psychological evaluation reports for cases of possible torture or ill-treatment (practical application of the Istanbul Protocol).